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Supreme Court, U. S.
FILED
SEP 25 1972
MICHAEL RODAK, JR., CLERK

IN THE

UNITED STATES SUPREME COURT

NO. 72-233

Hyman Lebman

versus

United States of America

Reply to

United States Memorandum in opposition.

IN THE

UNITED STATES SUPREME COURT.

NO. 72-233

Hyman Lebman
Petitioner

Versus

United States of America

In answer to the Government memorandum as to timely filing, the writ of certiorari was stamped received by the Clerk of the Supreme Court in Washington, D. C. on the 30th day of June, 1972 and thus was filed in time. This was then returned by the Clerk for correction of printing and returned to that office after correction was made and was then docketed under the above number, under authority of rule 39 (4).

A highly controversial constitutional question is raised when the memorandum for the Government in opposition, dated September, 1972, is read.

Therein, the Government takes the position that whenever Congress passes a law and adds thereto its intent, that it

automatically assumes constitutional approval.

Mentioned are some appeal courts in agreement. Not mentioned are those not in agreement, in the appeals court, nor the indications of the Supreme Court in relation to the question.

The Government had, in its original pleadings, claimed the Commerce Clause as its authority and in doing so assumed the responsibility of showing nexus to interstate commerce and proving this factor. Finding itself unable to do so, attempt to "short circuit" its constitutional responsibility by arguing that "congress intended to regulate the acquisition of fire arms and the keeping of records of firearms without requiring the Government to show, in each case, and prove, in each case, that this action had nexus to interstate commerce.

To this, Petitioner disagrees and contends that the intent of Congress does not in its self make a law constitutional.

If the intent of Congress made a law constitutional, it would be axiomatic that no law could be unconstitutional as it is reasonable to assume that every law it passes is the intent of Congress.

Petitoner contends that all law must be within the confines of the Constitution regardless of the intent of Congress. To hold that Congress can decide that any transaction or trade in any item is automatically interstate commerce would be an unwarranted extension of the federal power under the Interstate Commerce Clause.

Declaring intra-state commerce to be interstate commerce simply because of intent without showing and proving an actual burden upon interstate commerce in each case, not only is a wide interpretation of the Constitution but actually a change of the Constitution and Petitioner believes this question should be decided by the United States Supreme Court as to whether the Interstate Commerce Clause is to be interpreted in such a manner.

This law is a relatively new law and there has been a variance of opinions in the appeal courts, with questions of constitutionally remaining unanswered, therefore the Petitioner prays that the write of certiorari will be granted.

Hyman Lebman,
Petitioner.

Hyman Lebman
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